

Approved For Release 2011/03/07 : CIA-RDP89-00066R000300010024-5

*U.S. Code Service
Lawyers Edition
Title 42*

Approved For Release 2011/03/07 : CIA-RDP89-00066R000300010024-5

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ployer's distribution of the monies properly represented employment and retirement benefits. *Ford v Ribicoff* (1961, DC Tenn) 199 F Supp 822.

6. Sick pay exemption

Payments made by employer to employee during eight month period of illness which were not

paid pursuant to a benefit plan were wages. *MacPherson v Ewing* (1952, DC Cal) 107 F Supp 666.

Sick pay accumulated from sick leave credits amounted to wages within the scope of this section. *Graves v Gardner* (1968, DC NY) 280 F Supp 666.

§ 410. Definition of employment

For the purposes of this title—

(a) **Employment.** The term "employment" means any service performed after 1936 and prior to 1951 which was employment for the purposes of this title under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 either (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen of the United States as an employee (i) of an American employer (as defined in subsection (e)), or (ii) of a foreign subsidiary (as defined in section 3121 (l) of the Internal Revenue Code of 1954 [26 USCS § 3121 (l)]) of a domestic corporation (as determined in accordance with section 7701 of the Internal Revenue Code of 1954 [26 USCS § 7701]) during any period for which there is in effect an agreement, entered into pursuant to section 3121 (l) of the Internal Revenue Code of 1954 [26 USCS § 3121 (l)], with respect to such subsidiary; except that, in the case of service performed after 1950, such term shall not include—

(1) Service performed by foreign agricultural workers (A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended, or (B) lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

(2) Domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3) (A) Service performed by an individual in the employ of his spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(B) Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an

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individual in the employ of his son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service if—

- (i) the employer is a surviving spouse or a divorced individual and has not remarried, or has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and
 - (ii) a son, daughter, stepson, or stepdaughter of such employer is living in the home, and
 - (iii) the son, daughter, stepson, or stepdaughter (referred to in clause (ii)) has not attained age 18 or has a mental or physical condition which requires the personal care and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the service is rendered;
- (4) Service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft when outside the United States and (B) (i) such individual is not a citizen of the United States or (ii) the employer is not an American employer;
- (5) Service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 1410 of the Internal Revenue Code [of 1939] by virtue of any provision of law which specifically refers to such section in granting such exemption;
- (6) (A) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law of the United States;
- (B) Service performed by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code [of 1939] on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—
- (i) service performed in the employ of a corporation which is wholly owned by the United States;
 - (ii) service performed in the employ of a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Home Loan Bank, or a Federal Credit Union;

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- (iii) service performed in the employ of a State, county, or community committee under the Production and Marketing Administration;
 - (iv) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or
 - (v) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchange or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of the Treasury, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;
- (C) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—
- (i) as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress;
 - (ii) in the legislative branch;
 - (iii) in a penal institution of the United States by an inmate thereof;
 - (iv) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interned student nurses, and other student employees of hospitals of the Federal Government) [5 USCS § 5251(2)], other than as a medical or dental intern or a medical or dental resident in training;
 - (v) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; or
 - (vi) by any individual to whom subchapter III of chapter 83 of title 5, United States Code [5 USCS §§ 8331-8348], does not apply, because such individual is subject to another retirement system (other than the retirement system of the Tennessee Valley Authority);
- (7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of—

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(A) service included under an agreement under section 218 [42 USCS § 418],

(B) service which, under subsection (k), constitutes covered transportation service,

(C) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this title—

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an officer or employee of the United States or any agency or instrumentality thereof, and

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate,

(D) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States; except that the provisions of this subparagraph shall not be applicable to service performed—

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government, [5 USCS § 5351(2)]), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis, or

(E) service performed in the employ of the Government of Guam (or any instrumentality which is wholly owned by such Government) by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam; except that (i) the provisions of this subparagraph shall not be applicable to services performed by an elected official or a member of the legislature or in a hospital or penal

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institution by a patient or inmate thereof, and (ii) for purposes of this subparagraph, clauses (i) and (ii) of subparagraph (C) shall apply;

(8) (A) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, except that this subparagraph shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under section 3121(r) of the Internal Revenue Code of 1954 [26 USCS § 3121(r)] is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs;

(B) Service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) of the Internal Revenue Code of 1954 [26 USCS § 501(c)(3)], which is exempt from income tax under section 501(a) of such Code [26 USCS § 501(a)], but this subparagraph shall not apply to service performed during the period for which a certificate, filed pursuant to section 3121(k) of the Internal Revenue Code of 1954 [26 USCS § 3121(k)], is in effect if such service is performed by an employee—

(i) whose signature appears on the list filed by such organization under such section 3121(k) [26 USCS § 3121(k)],

(ii) who became an employee of such organization after the calendar quarter in which the certificate (other than a certificate referred to in clause (iii)) was filed, or

(iii) who, after the calendar quarter in which the certificate was filed with respect to a group described in paragraph (1)(E) of such section 3121(k) [26 USCS § 3121(k)], became a member of such group,

except that this subparagraph shall apply with respect to service performed by an employee as a member of a group described in such paragraph (1)(E) with respect to which no certificate is in effect;

(9) Service performed by an individual as an employee or employee representative as defined in section 1532 of the Internal Revenue Code [of 1939];

(10) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101 of the Internal Revenue Code [of 1939], if the remuneration for such service is less than \$50;

(B) Service performed in the employ of—

(i) a school, college, or university, or

(ii) an organization described in section 509(a)(3) of the Internal Revenue Code of 1954 [26 USCS § 509(a)(3)] if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, super-

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vised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services in its employ performed by a student referred to in section 218(c)(5) [42 USCS § 418(c)(5)] are covered under the agreement between the Secretary of Health, Education, and Welfare and such State entered into pursuant to section 218 [42 USCS § 418];

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law;

(14) (A) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(15) Service performed in the employ of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669) [22 USCS §§ 288–288F-1; 42 USCS §§ 401 note, 409];

(16) Service performed by an individual under an arrangement with the owner or tenant of land pursuant to which—

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(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced;

(17) Service in the employ of any organization which is performed (A) in any quarter during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950, as amended [18 USCS §§ 792 note, 793, 794 note, 1507; 22 USCS § 618; 50 USCS §§ 781-798, 831-835], as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;

(18) Service performed in Guam by a resident of the Republic of the Philippines while in Guam on a temporary basis as a nonimmigrant alien admitted to Guam pursuant to section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U. S. C. 1101(a)(15)(H)(ii)) [8 USCS § 1101(a)(15)(H)(ii)]; or

(19) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended [8 USCS § 1101(a)(15)(F) or (J)], and which is performed to carry out the purpose specified in subparagraph (F) or (J) [8 USCS § 1101(a)(15)(F) or (J)], as the case may be.

(b) Included and excluded service. If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by paragraph (9) of subsection (a).

(c) American vessel. The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United

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States or corporations organized under the laws of the United States or of any State.

(d) **American aircraft.** The term "American aircraft" means an aircraft registered under the laws of the United States.

(e) **American employer.** The term "American employer" means an employer which is (1) the United States or any instrumentality thereof, (2) a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing, (3) an individual who is a resident of the United States, (4) a partnership, if two-thirds or more of the partners are residents of the United States, (5) a trust, if all of the trustees are residents of the United States, or (6) a corporation organized under the laws of the United States or of any State.

(f) **Agricultural labor.** The term "agricultural labor" includes all service performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended [12 USCS § 1141j(g)], or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(4) (A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed.

(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For the purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than twenty at any time during the calendar quarter in which such service is performed.

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(5) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

The provisions of subparagraphs (A) and (B) of paragraph (4) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(g) **Farm.** The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, green-houses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(h) **State.** The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(i) **United States.** The term "United States" when used in a geographical sense means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(j) **Employee.** The term "employee" means—

- (1) any officer of a corporation; or
- (2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or
- (3) any individual (other than an individual who is an employee under paragraph (1) or (2) of this subsection) who performs services for remuneration for any person—
 - (A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;
 - (B) as a full-time life insurance salesman;
 - (C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or
 - (D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that

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an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

(k) Covered transportation service.

(1) Except as provided in paragraph (2), all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

(2) Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if—

(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system is, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, can not be diminished or impaired; or

(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951; except that if such State or political subdivision makes an acquisition after 1950 from private ownership or any part of its transportation system, then, in the case of any employee who—

(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and

(D) prior to such acquisition rendered service in employment in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees described in subparagraph (C).

(3) All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation

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system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) For the purposes of this subsection—

(A) The term “general retirement system” means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this title, and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term “political subdivision” includes an instrumentality of (i) a State, (ii) one or more political subdivisions of a State, or (iii) a State and one or more of its political subdivisions.

(I) Service in the uniformed services.

(1) Except as provided in paragraph (4), the term “employment” shall, notwithstanding the provisions of subsection (a) of this section, include service performed after December 1956 by an individual as a member of a uniformed service on active duty; but such term shall not include any such service which is performed while on leave without pay.

(2) The term “active duty” means “active duty” as described in section 102 of the Servicemen's and Veterans' Survivor Benefits Act, except that it shall also include “active duty for training” as described in such section.

(3) The term “inactive duty training” means “inactive duty training” as described in such section 102.

(4)(A) Paragraph (1) of this subsection shall not apply in the case of any service, performed by an individual as a member of a uniformed service, which is creditable under section 4 of the Railroad Retirement Act of 1937 [45 USCS § 228c-1]. The Railroad Retirement Board shall notify the Secretary of Health, Education, and Welfare, as provided in section 4(p)(2) of that Act [45 USCS § 228c-1(p)(2)], with respect to all such service which is so creditable.

(B) In any case where benefits under this title are already payable on the basis of such individual's wages and self-employment income at

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the time such notification (with respect to such individual) is received by the Secretary, the Secretary shall certify no further benefits for payment under this title on the basis of such individual's wages and self-employment income, or shall recompute the amount of any further benefits payable on the basis of such wages and self-employment income, as may be required as a consequence of subparagraph (A) of this paragraph. No payment of a benefit to any person on the basis of such individual's wages and self-employment income, certified by the Secretary prior to the end of the month in which he receives such notification from the Railroad Retirement Board, shall be deemed by reason of this subparagraph to have been an erroneous

payment or a payment to which such person was not entitled. The Secretary shall, as soon as possible after the receipt of such notification from the Railroad Retirement Board, advise such Board whether or not any such benefit will be reduced or terminated by reason of subparagraph (A), and if any such benefit will be so reduced or terminated, specify the first month with respect to which such reduction or termination will be effective.

Member of a uniformed service. The term "member of a uniformed service" means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component of a uniformed service as defined in section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

- (1) a retired member of any of those services;
- (2) a member of the Fleet Reserve or Fleet Marine Corps Reserve;
- (3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air Force Academy;
- (4) a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and
- (5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military or naval service—

(A) who has been provisionally accepted for such duty; or

(B) who, under the Universal Military Training and Service Act [50 Appx. USCS §§ 451, 453, 454, 455, 456, 458–471a], has been selected for active military or naval service;

and has been ordered or directed to proceed to such place.

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The term does not include a temporary member of the Coast Guard Reserve.

(n) **Crew leader.** The term "crew leader" means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. A crew leader shall, with respect to services performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

(o) **Peace Corps Volunteer Service.** The term "employment" shall, notwithstanding the provisions of subsection (a), include service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act [20 USCS § 425; 22 USCS §§ 2501-2523; 26 USCS §§ 912, 3121, 3122, 3401, 6051; 42 USCS §§ 405, 409, 410].

(Aug. 14, 1935, c. 531, Title II, § 210, as added Aug. 28, 1950, c. 809, Title I, § 104(a), 64 Stat. 494; Oct. 31, 1949, c. 792, Title V, § 506(a)[505(a)], as added July 12, 1951, c. 223, 65 Stat. 120; Sept. 1, 1954, c. 1206, Title I, § 101(a)(4), (5), (b)-(c)(2), (e), (f), (m), 68 Stat. 1052, 1053, 1054, 1061; Aug. 1, 1956, c. 836, Title I, §§ 104(a)-(c)(1), 105(b), 121(c), 70 Stat. 824, 828, 839; Aug. 1, 1956, c. 837, Title IV, § 402(a), 70 Stat. 870; Aug. 28, 1958, P. L. 85-840, Title III, §§ 311(a), 312(a), 72 Stat. 1035; June 25, 1959, P. L. 86-70, § 32(c)(2), 73 Stat. 149; Aug. 18, 1959, P. L. 86-168, Title I, § 104(h), Title II, § 202(a), 73 Stat. 387, 389; July 12, 1960, P. L. 86-624, § 30(c)(2), 74 Stat. 420; Sept. 13, 1960, P. L. 86-778, Title I, §§ 103(c)-(f), (j)(2)(A), (B), 104(a), 74 Stat. 936, 937, 942; Sept. 21, 1961, P. L. 87-256, § 110(e)(2), 75 Stat. 537; Sept. 22, 1961, P. L. 87-293, Title II, § 202(b)(1), 75 Stat. 626; Oct. 3, 1961, P. L. 87-345, § 3, 75 Stat. 761; July 30, 1965, P. L. 89-97, Title III, §§ 311(a)(3), (4), 317(a), 79 Stat. 380, 381, 388; Jan. 2, 1968, P. L. 90-248, Title I, Part 2, § 123(a), Title IV, § 403(a), 81 Stat. 844, 931; Oct. 30, 1972, P. L. 92-603, Title I, §§ 123(a)(1), 128(a), 129(a)(1), 86 Stat. 1354, 1358, 1359.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES**References in text:**

"This title", referred to in this section, is Title II of the Social Security Act of 1935 and appears as 42 USCS §§ 401, 402-410, 411-418, 420-423, 424a-426, 427-431.

"Title V of the Agricultural Act of 1949, as amended," referred to in subsec. (a)(1) of this section, is Act Oct. 31, 1949, c. 792, Title V, as

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added July 12, 1951, c. 223, 65 Stat. 119, as amended, which formerly appeared as 7 USCS §§ 1461-1468.

"Section 1410 of the Internal Revenue Code [of 1939]", referred in subsec. (a)(5), (6)(B), of this section, was repealed by § 7851 of the Internal Revenue Code of 1954 [26 USCS § 7851]. Similar provisions as reenacted appear as 26 USCS § 3111. For provision that reference in other laws to Internal Revenue Code of 1939 be deemed also to refer to the corresponding provision of Internal Revenue Code of 1954, see 26 USCS § 7852(b).

"Section 1532 of the Internal Revenue Code [of 1939]", referred to in subsec. (a)(9) of this section, was repealed by § 7851 of the Internal Revenue Code of 1954 [26 USCS § 7851]. Similar provisions as reenacted appear as 26 USCS §§ 3231 and 7701. For provision that reference in other laws to Internal Revenue Code of 1939 be deemed also to refer to the corresponding provision of Internal Revenue Code of 1954, see 26 USCS § 7852(b).

"Section 101 of the Internal Revenue Code [of 1939]", referred to in subsec. (a)(10)(A) of this section, was repealed by § 7851 of the Internal Revenue Code of 1954 [26 USCS § 7851]. Similar provisions as reenacted appear as 26 USCS §§ 501, 502, 521, 522. For provision that reference in other laws to Internal Revenue Code of 1939 be deemed also to refer to the corresponding provision of Internal Revenue Code of 1954, see 26 USCS § 7852(b).

"Section 102 of the Servicemen's and Veterans' Survivor Benefits Act", "such section 102", and "section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act", referred to in subsecs. (1)(2), (3), (m) of this section, was repealed and superseded by Act Sept. 2, 1958, P. L. 85-857, 72 Stat. 1105. Similar provisions as reenacted appear as 38 USCS §§ 101, 106, 401-404, 421.

Explanatory notes:

This section as originally enacted contained a prior § 210 (Act Aug. 14, 1935, c. 531, Title II, § 210, 49 Stat. 625), which was superseded by § 209 of Act Aug. 14, 1935, as amended by Act Aug. 10, 1939, c. 666, Title II, § 201, 53 Stat. 1373, see 42 USCS § 409.

Another prior § 210 (Act Aug. 14, 1935, c. 531, Title II, § 210, as added Aug. 10, 1946, c. 951, Title II, § 201, 60 Stat. 979) was superseded by § 217 of Act Aug. 14, 1935, as added Aug. 28, 1950, c. 809, Title I, § 105, 64 Stat. 512, which appears as 42 USCS § 417.

Transfer of functions:

The Coast and Geodetic Survey was consolidated with the Weather Bureau to form the Environmental Science Services Administration by Reorganization Plan No. 2 of 1965. The Environmental Science Services Administration was abolished by Reorganization Plan No. 4 of 1970, which established the National Oceanic and Atmospheric Administration. See 5 USCS § 903 note.

Amendments:

1951. Act Oct. 31, 1949, as added July 12, 1951, in subsec. (a)(1), added subparagraph (C).

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1954. Act Sept. 1, 1954, in subsec. (a), in that part preceding paragraph (1), in clause (B), substituted "(i) of" for "for", and added subclause (ii); Substituted paragraph (1) for former paragraph (1), which read:

"(1)(A) Agricultural labor (as defined in subsection (f) of this section) performed in any calendar quarter by an employee, unless the cash remuneration paid for such labor (other than service described in subparagraph (B)) is \$50 or more and such labor is performed for an employer by an individual who is regularly employed by such employer to perform such agricultural labor. For the purposes of this subparagraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

"(i) such individual performs agricultural labor (other than service described in subparagraph (B)) for such employer on a full-time basis on sixty days during such quarter, and

"(ii) the quarter was immediately preceded by a qualifying quarter.

For the purposes of the preceding sentence, the term 'qualifying quarter' means (I) any quarter during all of which such individual was continuously employed by such employer, or (II) any subsequent quarter which meets the test of clause (i) if, after the last quarter during all of which such individual was continuously employed by such employer, each intervening quarter met the test of clause (i). Notwithstanding the preceding provisions of this subparagraph, an individual shall also be deemed to be regularly employed by an employer during a calendar quarter if such individual was regularly employed (upon application of clauses (i) and (ii)) by such employer during the preceding calendar quarter.

"(B) Service performed in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended, or in connection with the ginning of cotton;

"(C) Service performed by foreign agricultural workers under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended.";

Deleted former paragraph (3), which read:

"(3) Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For the purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if (A) on each of some twenty-four days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or (B) such individual was regularly employed (as determined under clause (A)) by such employer in the performance of such service during the preceding calendar quarter. As used in this paragraph, the term 'service not in the course of the employer's trade or business' does not include

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domestic service in a private home of the employer and does not include service described in subsection (f)(5);";

Redesignated former paragraphs (4)-(14) as paragraphs (3)-(13), respectively;

In paragraph (4), as redesignated, inserted "(A)" and added clause (B);

In paragraph (6), as redesignated, in subparagraph (B), in that part preceding clause (i), inserted "by an individual" and "and if such service is covered by a retirement system established by such instrumentality";

At the end of clause (iii), deleted "or"; at the end of clause (iv), substituted "; or" for ";", and added clause (v);

In subparagraph (C), in clause (i), deleted ";", following "Commissioner", and substituted clauses (iii)-(vi) for former clauses (iii)-(xiii), which read:

"(iii) in the field service of the Post Office Department unless performed by any individual as an employee who is excluded by Executive order from the operation of the Civil Service Retirement Act of 1930 because he is serving under a temporary appointment pending final determination of eligibility for permanent or indefinite appointment;

or of any other board, council, committee, or other similar body, unless such board, council, committee, or other body is composed exclusively of individuals otherwise in the fulltime employ of the United States; or

"(xiii) by an individual to whom the Civil Service Retirement Act of 1930 does not apply because such individual is subject to another retirement system;";

Deleted former paragraph (15), which read:

"(15) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except (A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (B) service performed on or in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);";

"(iv) in or under the Bureau of the Census of the Department of Commerce by temporary employees employed for the taking of any census;

"(v) by any individual as an employee who is excluded by Executive order from the operation of the Civil Service Retirement Act of 1930 because he is paid on a contract or fee basis;

"(vi) by any individual as an employee receiving nominal compensation of \$12 or less per annum;

"(vii) in a hospital, home, or other institution of the United States by a patient or inmate thereof;

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"(viii) by any individual as a consular agent appointed under authority of section 551 of the Foreign Service Act of 1946 (22 U. S. C., sec. 951);

"(ix) by any individual as an employee included under section 2 of the Act of August 4, 1947 (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government; 5 U. S. C., sec. 1052);

"(x) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

"(xi) by any individual as an employee who is employed under a Federal relief program to relieve him from unemployment;

"(xii) as a member of a State, county, or community committee under the Production and Marketing Administration

Redesignated former paragraphs (16) and (17) as paragraphs (14) and (15), respectively;

In subsec. (k)(3)(C), deleted ", if the performance of such services is subject to licensing requirements under the laws of the State in which such services are performed" preceding ";".

1956. Act Aug. 1, 1956, c. 836, in subsec. (a)(1), in subparagraph (B), inserted ", or from any foreign country or possession thereof,";

In subsec. (a)(6), in subparagraph (B)(ii), inserted "a Federal Home Loan Bank," and in subparagraph (C)(vi), deleted "of 1930" following "Act", and added "(other than the retirement system of the Tennessee Valley Authority)";

In subsec. (a), at the end of paragraph (14), deleted "or", at the end of paragraph (15), substituted ";", for ".", and added paragraphs (16) and (17);

Added subsec. (o).

Act Aug. 1, 1956, c. 837, added subsecs. (m) and (n).

1958. Act Aug. 28, 1958, substituted subsec. (a)(1) for former subsec. (a)(1), which read:

"(1)(A) Service performed in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended;

"(B) Service performed by foreign agricultural workers (i) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended, or (ii) lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any foreign country or possession thereof, on a temporary basis to perform agricultural labor;";

In subsec. (a)(8), substituted subparagraph (B) for former subparagraph (B), which read:

"(B) Service performed in the employ of a religious, charitable, educational, or other organization exempt from income tax under section 101(6) of the Internal Revenue Code, but this subparagraph shall not apply to service performed during the period for which a certificate, filed pursuant to section 1426(l) of the Internal Revenue Code, is in effect if such service is performed by an employee (i)

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whose signature appears on the list filed by such organization under such section 1426(l), or (ii) who became an employee of such organization after the calendar quarter in which the certificate was filed;"

1959. Act June 25, 1959, in subsecs. (h) and (i), deleted "Alaska," preceding "Hawaii";

Act Aug. 18, 1959, in subsec. (a)(6)(B)(ii), inserted "a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives" and substituted "Federal land bank association" for "national farm loan association";

1960. Act July 12, 1960, in subsec. (h), deleted "Hawaii," preceding "the District" and "," following "Columbia";

In subsec. (i), deleted "Hawaii," preceding "the District".

Act Sept. 13, 1960, in subsec. (a)(3), inserted "(A)", and in clause (A), deleted "son, daughter, or" preceding "spouse";

Added clause (B);

Substituted subsec. (a)(7) for former subsec. (a)(7), which read:

"(7) Service (other than service included under an agreement under section 218 and other than service which, under subsection (l), constitutes covered transportation service) performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions;"

In subsec. (a), at the end of paragraph (16), deleted "or", at the end of paragraph (17), substituted "; or" for ":", and added paragraph (18);

In subsec. (h), substituted "the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa" for "and the Virgin Islands; and on and after the effective date specified in section 219 such term includes Puerto Rico";

In subsec. (i), substituted "the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa" for "and the Virgin Islands; and on and after the effective date specified in section 219 such term includes Puerto Rico";

Repealed former subsec. (j), which read:

"(j) An individual who is a citizen of Puerto Rico (but not otherwise a citizen of the United States) and who is not a resident of the United States shall not be considered, for the purposes of this section, as a citizen of the United States prior to the effective date specified in section 219.";

Redesignated former subsecs. (k), (l), (m), (n), and (o) as subsecs. (j), (k), (l), (m), and (n), respectively.

1961. Act Sept. 21, 1961, in subsec. (a), at the end of paragraph (17), deleted "or", at the end of paragraph (18), substituted "; or" for ":", and added paragraph (19).

Act Sept. 22, 1961, added subsec. (o).

1965. Act July 30, 1965, in subsec. (a)(6)(C)(iv), inserted "other than as a medical or dental intern or a medical or dental resident in training";

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In subsec. (a)(7), at the end of subparagraph (B), deleted "or", at the end of subparagraph (C), substituted ", or" for ";", and added subparagraph (D);

In subsec. (a)(13), deleted "and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law;" following "pursuant to State law;"

1968. Act Jan. 2, 1968, in subsec. (a)(3)(B), added that part beginning with "except that the provisions of this subparagraph" and ending with "in the calendar quarter in which the service is rendered;"

In subsec. (a)(6)(C), in clause (iv), substituted "under section 5351(2) of title 5, United States Code" for "under section 2 of the Act of August 4, 1947", and deleted "; 5 U.S.C., sec. 1052" following "Government";

In clause (vi), substituted "subchapter III of chapter 83 of title 5, United States Code," for "the Civil Service Retirement Act";

In subsec. (a)(7)(D), in clause (ii), substituted "under section 5351(2) of title 5, United States Code" for "under section 2 of the Act of August 4, 1947" and deleted "; 5 U.S.C. 1052" following "Government".

1972. Act Oct. 30, 1972, in subsec. (a)(7), at the end of subparagraph (C), deleted "or", at the end of subparagraph (D), substituted ", or" for ";", and added subparagraph (E);

In subsec. (a)(8), in subparagraph (A), added that part beginning with ", except that this subparagraph shall not apply" and ending with "such member belongs";

In subsec. (a)(10), substituted subparagraph (B) for former subparagraph (B), which read:

"(B) Service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;"

Redesignation:

Act Oct. 3, 1961, redesignated § 505(a) of Act Oct. 31, 1949, to be § 506(a) of Act Oct. 31, 1949.

Effective dates:

Section 104(b) of Act Aug. 28, 1950, provided that this section, as added by § 104(a) of Act Aug. 28, 1950, "shall take effect January 1, 1951".

Section 101(n) of Act Sept. 1, 1954, provided that the amendment to subsec. (a)(1), the deletion of former subsec. (a)(3) and the redesignation of former subssecs. (a)(4)-(14) to be subssecs. (a)(3)-(13), respectively, "shall be applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is paid after 1954."

Section 101(n) of Act Sept. 1, 1954, further provided that the amendments to subsec. (a)(4), (a)(6)(B) and (C), (a)(14), (a)(15), and (k)(3)(C) of this section "shall be applicable only with respect to services performed after 1954."

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Section 104(i) of Act Aug. 1, 1956, c. 836, provided:

"(1) The amendment made by subsection (a) [to subsec. (a)(1)(B) of this section] shall apply with respect to service performed after 1956. The amendments made by paragraph (1) of subsection (c) [to subsec. (a)(14)-(16) of this section] shall apply with respect to service performed after 1954. The amendment made by paragraph (2) of subsection (c) [to 42 USCS § 411(a)(1)] shall apply with respect to taxable years ending after 1955. The amendment made by paragraph (3) of subsection (c) [to 42 USCS § 411(c)(2)] shall apply with respect to taxable years ending after 1954. The amendment made by subsection (d) [42 USCS § 411(c)(5)] shall apply with respect to taxable years ending after 1955. The amendment made by subsection (h) [to 42 USCS § 411(a)(7)(B)] shall apply with respect to the same taxable years with respect to which the amendment made by section 201(g) of this Act [to 26 USCS § 1402(a)(8)(B)] applies.

"(2)(A) Except as provided in subparagraphs (B) and (C), the amendments made by subsection (b) [to subsecs. (a)(6)(B)(ii) and (a)(6)(C)(vi) of this section] shall apply only with respect to service performed after June 30, 1957, and only if—

"(i) in the case of the amendment made by paragraph (1) of such subsection [to subsec. (a)(6)(B)(ii) of this section], the conditions prescribed in subparagraph (B) are met; and

"(ii) in the case of the amendment made by paragraph (2) of such subsection [to subsec. (a)(6)(C)(vi) of this section], the conditions prescribed in subparagraph (C) are met.

"(B) The amendment made by paragraph (1) of subsection (b) [to subsec. (a)(6)(B)(ii) of this section] shall be effective only if—

"(i) the Federal Home Loan Bank Board submits to the Secretary of Health, Education, and Welfare, and the Secretary approves, before July 1, 1957, a plan, with respect to employees of Federal Home Loan Banks, for the coordination, on an equitable basis, of the benefits provided by the retirement system applicable to such employees with the benefits provided by title II of the Social Security Act [see references in text note this section]; and

"(ii) such plan specifies, as the effective date of the plan, July 1, 1957, or the first day of a prior calendar quarter beginning not earlier than January 1, 1956.

If the plan specifies as the effective date of the plan a day before July 1, 1957, the amendment made by paragraph (1) of subsection (b) [to subsec. (a)(6)(B)(ii) of this section] shall apply with respect to service performed on or after such effective date; except that, if such effective date is prior to the day on which the Secretary approves the plan, such amendment shall not apply with respect to service performed, prior to the day on which the Secretary approves the plan, by an individual who is not an employee of a Federal Home Loan Bank on such day.

"(C) The amendment made by paragraph (2) of subsection (b) [to subsec. (a)(6)(C)(vi) of this section] shall be effective only if—

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"(i) the Board of Directors of the Tennessee Valley Authority submits to the Secretary of Health, Education, and Welfare, and the Secretary approves, before July 1, 1957, a plan, with respect to employees of the Tennessee Valley Authority, for the coordination, on an equitable basis, of the benefits provided by the retirement system applicable to such employees with the benefits provided by title II of the Social Security Act [see references in text note this section]; and

"(ii) such plan specifies, as the effective date of the plan, July 1, 1957, or the first day of a prior calendar quarter beginning not earlier than January 1, 1956.

If the plan specifies as the effective date of the plan a day before July 1, 1957, the amendment made by paragraph (2) of subsection (b) [to subsec. (a)(6)(C)(vi) of this section] shall apply with respect to service performed on or after such effective date; except that, if such effective date is prior to the day on which the Secretary approves the plan, such amendment shall not apply with respect to service performed, prior to the day on which the Secretary approves the plan, by an individual who is not an employee of the Tennessee Valley Authority on such day.

"(D) The Secretary of Health, Education, and Welfare shall, on or before July 31, 1957, submit a report to the Congress setting forth the details of any plan approved by him under subparagraph (B) or (C)."

Section 125(b) of Act Oct. 30, 1972, repealed subparagraphs (A)(i) and (B) of paragraph (2) of § 104(i) of Act Aug. 1, 1956, c. 836.

Section 105(d) of Act Aug. 1, 1956, c. 836, provided that the amendment of this section by adding subsec. (o) "shall apply with respect to service performed after 1956."

Section 603(a) of Act Aug. 1, 1956, c. 837, provided that the amendment of this section by adding subsecs. (m) and (n) "shall take effect on January 1, 1957."

Section 311(b) of Act Aug. 28, 1958, provided that the amendment of subsec. (a)(1) of this section "shall apply with respect to service performed after 1958."

Section 312(b) of Act Aug. 28, 1958, provided that the amendment of subsec. (a)(8)(B) of this section "shall apply with respect to certificates filed under section 3121(k)(1) of the Internal Revenue Code of 1954 [26 USCS § 3121(k)(1)] after the date of enactment of this Act [Aug. 28, 1958]."

Section 47(d) of Act June 25, 1959, provided that the amendment of subsecs. (h) and (i) of this section "shall be effective on January 3, 1959."

Section 104(k) of Act Aug. 18, 1959, provided that the amendment of subsec. (a)(6)(B)(ii) of this section by substituting "Federal land bank association" for "national farm loan association" "shall become effective December 31, 1959."

Section 203(c) of Act Aug. 18, 1959, provided that the amendment of subsec. (a)(6)(B)(ii) of this section by inserting "a Federal land bank, a

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Federal intermediate credit bank, a bank for cooperatives," "shall become effective January 1, 1960."

Section 47(f) of Act July 12, 1960, provided that the amendments to subsecs. (h) and (i) of this section "shall become effective on August 21, 1959."

Section 103(v)(1) of Act Sept. 13, 1960, provided that the amendment of subsecs. (h) and (i) of this section "shall apply only with respect to service performed after 1960; except that insofar as the carrying on of a trade or business (other than performance of service as an employee) is concerned, such amendments shall apply only in the case of taxable years beginning after 1960.", provided that the amendment of subsec. (a) of this section by adding paragraph (18) "shall apply only with respect to service performed after 1960.", and provided that the amendments to this section by repealing former subsec. (j) and by redesignating former subsecs. (k) through (o) as subsecs. (j) through (n) "shall take effect on the date of enactment of this Act [Sept. 13, 1960]".

Section 103(v)(1), (2) of Act Sept. 13, 1960, provided that subsec. (a)(7) of this section, as amended, "shall apply only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act [see references in text note this section] extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by such title II [see references in text note this section] extended to the officers and employees of such Government and such political subdivisions and instrumentalities." and "shall have application only as expressly provided therein, and determinations as to whether an officer or employee of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, is an employee of the United States or any agency or instrumentality thereof within the meaning of any provision of law not affected by" subsec. (a)(7), as amended, "shall be made without any inferences drawn from" subsec. (a)(7), as amended.

Section 104(c) of Act Sept. 13, 1960, provided that the amendment to subsec. (a)(3) of this section "shall apply only with respect to services performed after 1960."

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Section 110(h)(3) of Act Sept. 21, 1961, provided that paragraph (19) of subsec. (a) of this section "shall apply with respect to service performed after December 31, 1961."

Section 202(c) of Act Sept. 22, 1961, provided that subsec. (o) of this section "shall apply with respect to service performed after the date of the enactment of this Act [Sept. 22, 1961]. In the case of any individual who is enrolled as a volunteer or volunteer leader under section 16(a) of this Act," such subsection "shall apply with respect to service performed on or after the effective date of such enrollment."

Section 311(c) of Act July 30, 1965, provided that the amendments of subsecs. (a)(6)(C)(iv) and (a)(13) of this section "shall apply only with respect to services performed after 1965."

Section 317(g) of Act July 30, 1965, provided that subsec. (a)(7)(D) of this section "shall apply with respect to service performed after the calendar quarter in which this section is enacted and after the calendar quarter in which the Secretary of the Treasury receives a certification from the Commissioners of the District of Columbia expressing their desire to have the insurance system established by title II [see references in text note this section] (and part A of title XVIII [42 USCS §§ 1395c-1395i-2]) of the Social Security Act extended to the officers and employees coming under the provisions of such subsection."

Section 123(c) of Act Jan. 2, 1968, provided that subsec. (a)(3)(B) of this section, as amended, "shall apply with respect to services performed after December 31, 1967."

Section 125(a) of Act Oct. 30, 1972, provided that subsec. (a)(6)(B)(ii) of this section, insofar as it relates to service performed in the employ of a Federal home loan bank, "shall be effective—

"(1) with respect to all service performed in the employ of a Federal home loan bank on and after the first day of the first calendar quarter which begins on or after the date of the enactment of this Act [Oct. 30, 1972]; and

"(2) in the case of individuals who are in the employ of a Federal home loan bank on such first day, with respect to any service performed in the employ of a Federal home loan bank after the last day of the sixth calendar year preceding the year in which this Act is enacted [1972]; but this paragraph shall be effective only if an amount equal to the taxes imposed by sections 3101 and 3111 of such Code [26 USCS §§ 3101 and 3111] with respect to the services of all such individuals performed in the employ of Federal home loan banks after the last day of the sixth calendar year preceding the year in which this Act is enacted are paid under the provisions of section 3122 of such Code [26 USCS § 3122] by July 1, 1973, or by such later date as may be provided in an agreement entered into before such date with the Secretary of the Treasury or his delegate for purposes of this paragraph."

Section 128(c) of Act Oct. 30, 1972, provided that the amendment of subsec. (a)(7) of this section by adding subparagraph (E), "shall apply with respect to service performed on and after the first day of the first calendar quarter which begins on or after the date of the enactment of this Act [Oct. 30, 1972]."

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Section 129(b) of Act Oct. 30, 1972, provided that subsec. (a)(10)(B) of this section, as amended, "shall apply to services performed after December 31, 1972."

Other provisions:

Covered employment under other Federal Retirement Systems. Section 115 of Act Sept. 1, 1954, provided: "Notwithstanding any other provision of law, in determining eligibility for or the amount of any benefit (other than a benefit under title II of the Social Security Act [see references in text note to this section] or under the Railroad Retirement Act of 1937, as amended [45 USCS §§ 228a-228c-1, 228e-228h, 228i-228s-3]) under any retirement system established by the United States or any instrumentality thereof, there shall not be taken into account any service which, by reason of the amendments to section 210(a) of the Social Security Act made by section 101(c) of this Act [subsec. (a) of this section], constitutes employment as defined in such section 210(a) [subsec. (a) of this section]."

Covered employment not counted under other Federal retirement systems. Act Dec. 31, 1970, P. L. 91-630, § 1, 84 Stat. 1875, repealed section 115 of Act Sept. 1, 1954.

Section 2 of such repealing Act [Act Dec. 31, 1970] provided:

"(a) The repeal of such section 115, made by the first section of this Act, shall not apply in the case of a person who, on the date of enactment of this Act [Dec. 31, 1970], is receiving or is entitled to receive benefits under any retirement system established by the United States or any instrumentality thereof unless he requests, in writing, the office which administers his retirement system to apply it in his case.

"(b) Any additional benefits payable pursuant to a request made under subsection (a) of this section shall commence on the first of the month following enactment of this Act [Dec. 31, 1970]."

Service for certain tax exempt organizations prior to Sept. 1, 1954. Section 403 of Act Sept. 1, 1954, as amended Sept. 13, 1960, P. L. 86-778, Title I, § 105(b)(6), 74 Stat. 944, provided:

"(a) In any case in which—

"(1) an individual has been employed, at any time subsequent to 1950 and prior to the enactment of this Act [Sept. 1, 1954], by an organization which is exempt from income tax under section 101(6) of the Internal Revenue Code of 1939 [for similar provisions as reenacted see 26 USCS § 510] but which has failed to file prior to the enactment of this Act [Sept. 1, 1954] a waiver certificate under section 1426 (l)(1) of the Internal Revenue Code of 1939 [for similar provisions as reenacted see 26 USCS § 3121(k)];

"(2) the service performed by such individual as an employee of such organization during the period subsequent to 1950 and prior to 1955 would have constituted employment (as defined in section 210 of the Social Security Act [this section] and section 1426(b) of the Internal Revenue Code of 1939 [for similar provisions as reenacted see 26 USCS § 3121(b)]) if such organization had filed prior to the performance of such service such a certificate accompanied by a list

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of the signatures of employees who concurred in the filing of such certificate and such individual's signature had appeared on such list;
 "(3) the taxes imposed by sections 1400 and 1410 of the Internal Revenue Code of 1939 [for similar provisions as reenacted see 26 USCS §§ 3101 and 3111] have been paid with respect to any part of the remuneration paid to such individual by such organization for such service;

"(4) part of such taxes have been paid prior to the enactment of this Act [Sept. 1, 1954]:

"(5) so much of such taxes as have been paid prior to the enactment of this Act [Sept. 1, 1954] have been paid by such organization in good faith and upon the assumption that a waiver certificate had been filed by it under section 1426(l)(1) of the Internal Revenue Code of 1939 [for similar provisions as reenacted see 26 USCS § 3121(k)]; and

"(6) no refund of such taxes has been obtained, the amount of such remuneration with respect to which such taxes have been paid shall, upon the request of such individual (filed on or before the date of enactment of the Social Security Amendments of 1960 [Sept. 13, 1960] in such form and manner, and with such official, as may be prescribed by regulations made under subchapter A of Chapter 9 of the Internal Revenue Code of 1939 [for similar provisions as reenacted see 26 USCS §§ 3101, 3102, 3111, 3112, 3121-3125, 3501-3503, 6011, 6051, 6071, 6081, 6091, 6205, 6302, 6313, 6413, 6601, 6802, 6803, 7208, 7209, 7701, 7805]), be deemed to constitute remuneration for employment as defined in section 210 of the Social Security Act [this section] and section 1426(b) of the Internal Revenue Code of 1939 [for similar provisions as reenacted see 26 USCS § 3121(b)].

"(b) In any case in which—

"(1) an individual has been employed, at any time subsequent to 1950 and prior to the enactment of this Act [Sept. 1, 1954], by an organization which has filed a waiver certificate under section 1426(l)(1) of the Internal Revenue Code of 1939 [for similar provisions as reenacted see 26 USCS § 3121(k)];

"(2) the service performed by such individual during the time he was so employed would have constituted employment (as defined in section 210 [this section] of the Social Security Act and section 1426(b) of the Internal Revenue Code of 1939 [for similar provisions as reenacted see 26 USCS § 3121(b)]) if such individual's signature had appeared on the list of signatures of employees who concurred in the filing of such certificate;

"(3) the taxes imposed by sections 1400 and 1410 of the Internal Revenue Code of 1939 [for similar provisions as reenacted see 26 USCS §§ 3101, 3111] have been paid prior to the enactment of this Act [Sept. 1, 1954] with respect to any part of the remuneration paid to such individual by such organization for such service; and

"(4) no refund of such taxes has been obtained, the amount of such remuneration with respect to which such taxes have been paid shall, upon the request of such individual (filed on or before January 1, 1957, and in such form and manner, and with such

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official, as may be prescribed by regulations made under subchapter A of chapter 9 of the Internal Revenue Code of 1939 [for similar provisions as reenacted see 26 USCS §§ 3101, 3102, 3111, 3121-3125, 3501-3503, 6011, 6051, 6071, 6081, 6091, 6205, 6302, 6313, 6413, 6601, 6802, 6803, 7208, 7209, 7509, 7701, 7805]), be deemed to constitute remuneration for employment as defined in section 210 of the Social Security Act [this section] and section 1426(b) of the Internal Revenue Code of 1939 [for similar provisions as reenacted see 26 USCS § 3121(b)], and such individual shall be deemed to have concurred in the filing of the waiver certificate filed by such organization under section 1426(l)(1) of the Internal Revenue Code of 1939 [for similar provisions as reenacted see 26 USCS § 3121(k)]."

Savings provision. Section 103(v)(3) of Act Sept. 13, 1960, provided:

"(3) The repeal (by subsection (j)(1)) of section 219 of the Social Security Act [42 USCS § 419], and the elimination (by subsections (e), (f), (h), (j)(2), and (j)(3)) of other provisions of such Act [subsecs. (h)-(j) of this section, 42 USCS § 411(a)(6), (b)] making reference to such section 219 [42 USCS § 419], shall not be construed as changing or otherwise affecting the effective date specified in such section for the extension to the Commonwealth of Puerto Rico of the insurance system under title II of such Act [see references in text note this section]. the manner or consequences of such extension, or the status of any individual with respect to whom the provisions so eliminated are applicable."

Repeal—Amendments Not Affected. Section 5(a) of Act Sept. 13, 1966, P. L. 89-572, 80 Stat. 765, repealed Title II of Act Sept. 22, 1961, which added subsec. (o) to this section; however, § 5(b) of Act Sept. 13, 1966, read: "Such repeal shall not be deemed to affect amendments contained in such provisions and the application of the amendments contained in the title. All determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the provisions of law repealed by subsection (a) shall continue in full force and effect until modified by appropriate authority."

CODE OF FEDERAL REGULATIONS

Federal old-age, survivors and disability insurance (1950-), 20 CFR 404.1 et seq.

CROSS REFERENCES

This section is referred to in 20 USCS § 125; 26 USCS § 3121; 33 USCS § 857; 42 USCS §§ 402, 403, 404, 405, 409, 411, 415, 416, 417, 418, 426a, 428, 429, 1395x; 45 USCS §§ 228e, 228g.

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Am Jur:

48 Am Jur, Social Security, Unemployment Insurance, and Retirement Funds §§ 2, 9, 10.

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Annotations:

Social Security Acts: Requisite of employment as affected by family relationship between alleged employer and employee. 8 ALR3d 696.

Outside pieceworkers as within Social Security or Unemployment Compensation Act. 1 ALR2d 555.

Salesman on commission as within Unemployment Compensation or Social Security Acts. 29 ALR2d 751.

What constitutes "agricultural" or "farm" labor within Social Security or Unemployment Compensation Acts. 53 ALR2d 406.

Professional personnel such as physicians, surgeons, dentists, lawyers, and the like as "employees" within Social Security Act. 88 ALR2d 979.

Taxicab driver as employee of owner of cab, or independent contractor, within social security and unemployment insurance statutes. 10 ALR2d 369.

INTERPRETIVE NOTES AND DECISIONS

1. Construction
2. Included and excluded services
3. Covered employment
4. Non-covered employment
5. —Familial services
6. —Agricultural labor
7. —Charitable organizations

1. Construction

In applying common-law standards to define the term "employee," the factor of control, if not determinative, is of considerable importance. *Cody v Ribicoff* (1961, CA8 Iowa) 289 F2d 394, 88 ALR2d 970.

Where claimant is not an "employee" under 42 USCS § 410(j)(2) earning "wages" under 42 USCS § 409, he should be included in the alternative class of persons receiving self-employment income under 42 USCS § 411(a), except as specifically excluded from the latter provisions. *Delno v Celebrezze* (1965, CA9 Ca) 347 F2d 159.

Under this section, the common-law rules govern as to whether an individual is an employee or self-employed. *Kelley v Celebrezze* (1965, DC NJ) 243 F Supp 18.

The amendment of this act which brought greenhouses definitely within the exemption applicable to employers of agricultural labor is an amendment in substance and not merely a legislative interpretation of the language used in the original enactment, and it does not control the interpretation of the North Dakota unemployment compensation act which was enacted prior to the congressional amendment. *Unemployment Compensation Div. v Valke's Greenhouses, Inc.* (1941) 70 ND 515, 296 NW 143.

2. Included and excluded services

Subsection (b) of this section applies only where an employee performs, for the same employer, both an included and excluded service within the meaning of subsec. (a). *Gardner v Travis* (1967, CA10 Okla) 387 F2d 508, mod in *Travis v Richardson* 434 F2d 225.

When corporation engaged in agricultural labor made tax returns from which it is impossible to segregate wages of any particular employee and determine what part of his services were devoted strictly to agricultural work, and many employees were rendering services which were not exempt, corporation could not recover social security taxes paid on ground that it is engaged in agricultural labor. *Fromm Bros., Inc. v United States* (1940, DC Wis) 35 F Supp 145.

3. Covered employment

An Illinois state bank receiver was an employee of the bank, and not of the state, with respect to allowance of social security benefits. *Carroll v Social Secur. Board* (1942, CA7 Ill) 128 F2d 876.

Evidence supported finding that retired university professor, who pursuant to "exclusive work" agreement spent 21 months over six years doing consulting work in Canada, and who spent the remainder of the time at home in Oklahoma doing research pertaining to his specialty, "worked" for the Canadian firm throughout the whole period. *Travis v Richardson* (1970, CA10 Okla) 434 F2d 225, modifying 387 F2d 508.

Crew members of a commercial halibut fishing boat, hired on a "share of fish caught" or "lay" basis, were employees of the owners of the boat, and not owners pro hac vice, although the union contract between the boat owners and the crew members laid unusual emphasis on the provi-

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that the crew members should share various kinds of losses. *Jacobson v United States*, 44 F Supp 685, 12 DC Wash 44.

That decedent was sole administrator for business where he worked does not necessitate that he forfeit his position as an employee. *Brannan v Federal Secur. Adm'r.* (1948, DC 77 F Supp 112).

There is nothing improper or questionable in a person entering bona fide employment with the express purpose of acquiring a wage which will enable him to qualify for old-age insurance benefits, and such motivation in organizing a corporation does not defeat recovery. *Brannon v Ribicoff* (1961, DC Mont) 200 F Supp 697.

Whether claimant was induced to accept employment solely for the purpose of becoming eligible for old-age and survivors' benefits, or whether this was merely a collateral "fringe" benefit of the relationship, could make no difference in determining whether claimant's services constituted covered employment. Neither could the unavailability of the compensation for such services disqualify the claimant; the terms of the agreement between the parties were matters for determination and were binding, provided the arrangement was in good faith. *Holland v Celebrezze* (1963, DC Tenn) 223 F Supp 347.

The fact that expert advice sought for and received was always followed by the business does not negate the "right of control" over the advice, since the phrase means no more than the right to determine which problems the expert will tackle. *Frantes v Celebrezze* (1964, DC Tenn) 237 F Supp 609.

Annotations:

Outside piece workers as within Social Security or Unemployment Compensation Act. 12 ALR2d 555.

Salesmen on commission as within Unemployment Compensation or Social Security Acts. 29 ALR2d 751.

Professional personnel such as physicians, surgeons, dentists, lawyers, and the like as "employees" within Social Security Act. 88 ALR2d 979.

Non-covered employment

Employer-employee relationship did not exist as to make corporation liable for social security tax where agent solicited orders using corporation's order forms but also solicited orders for other firms including competitors and was not entitled to any pension or other benefits paid to employees of said corporation. *Benson v Social Secur. Board* (1949, CA10 Kan) 172 F2d 682.

Services provided the Works Progress Administration are not of a qualifying employment.

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Siclari v Folsom (1958, CA9 Ca) 251 F2d 365, cert den 358 US 844, 3 L Ed 2d 78, 79 S Ct 68.

Finding that widow's benefits recipient performed "substantial services" for family owned corporation, for which she was secretary and director, and that she received compensation therefor rather than distributed dividends, overturned where although the same services were performed both before and after retirement, recipient spent very little time in corporate business, performed unskilled services, and had invested a large amount of capital. *Weisenfeld v Richardson* (1972, CA3 NJ) 463 F2d 670.

Saleslady on commission basis engaged in selling household supplies from house to house was not an "employee." *Ramin v Ewing* (1952, DC La) 106 F Supp 268.

Meat inspector paid wages by slaughtering plant was not an employee, although he worked at regular hours, where appointment was made by state, right of removal was by state, and reports as to work were sent directly to state, since plant did not control the inspector as to results to be accomplished or as to the means and manner in which the work was performed. *Schmidt v Ewing* (1952, DC Pa) 108 F Supp 505.

Individual, subject to control and direction merely as to the result to be accomplished and not as to the means and methods to be used, is an "independent contractor," not an employee. *Hemmerle v Hobby* (1953, DC NJ) 114 F Supp 16.

5. —Familial services

There was substantial evidence to support examiner's finding that no genuine employer-employee relationship existed between son engaged in real estate business and mother, who allegedly answered telephone, received rent money, made appointments, and took notice of other minor details of her son's business, all performed in the home in which they both lived, where she was 67 years old, had virtually no work experience, could neither read nor write English, and had been sick for at least part of the alleged employment. *Sabbagha v Celebrezze* (1965, CA4 SC) 345 F2d 509.

Plaintiff employed by a partnership consisting of his two sons was not entitled to the benefits of this act. *Ekus v Altmeyer* (9143, DC NY) 52 F Supp 306.

Referee's findings that the claimant's services were in fact performed by him as employee of his son and the creation of a corporation was subterfuge to evade the provisions of subsec. (a)(3) of this section were proper inferences and are binding upon the district court. *Howatt v*

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Folsom (1957, DC Pa) 160 F Supp 490, affd (CA3) F2d 680.

Evidence sustained referee's findings that daughter taking care of mother and being compensated by trustee-brother from funds of mother's estate, the mother having been declared an incompetent, was neither an employee or a self-employed individual engaging in a trade or business. Rhodes v Fleming (1960, DC Md) 180 F Supp 664.

Findings that employer-employee relationship did not exist under 42 USCS § 410, and that money received by plaintiff from the alleged employer-corporation was in reality rentals from real estate under 42 USCS § 411 (a)(1), were not supported by the evidence where plaintiff and his wife transferred their property to the corporation, directors and officers were regularly elected, corporate reports and tax returns were regularly filed on behalf of the corporation, and business was transacted in the corporate name, notwithstanding that annual meetings of the stockholders and directors were not held, said stockholders and directors being the plaintiff, his wife, son and daughter. Brannon v Ribicoff (1961, DC Mont) 200 F Supp 697.

Services rendered by claimant for an Alabama partnership consisting of her sons did not constitute "service performed by an individual in the employ of his son," since in Alabama a partnership, in contemplation of law, is an entity distinct from the members who compose it. Kilborn v Ribicoff (1962, DC Ala) 205 F Supp 630, affd (CA5) F2d 166.

Father who sold plumbing business to his sons who formed a partnership was an employee of the partnership and not an independent contractor, considering the length and nature of his relationship with the partnership and the fact that he never performed services for others, and as an employee of his son, his employment was excluded by subsec. (a)(3)(B) of this section and would not qualify for purposes of old age insurance benefits. Frantes v Celebrezze (1964, DC Minn) 237 F Supp 609.

Annotations:

Social Security Acts: Requisite of employment as affected by family relationship between alleged employer and employee. 8 ALR3d 696.

6. —Agricultural labor

Labor employed in production of crude gum or oleoresin by the sacrifice of living pine trees and in processing the crude gum or oleoresin so produced into gum spirits of turpentine and gum resin is "agricultural labor" and exempt from social security tax. United States v

Turner Turpentine Co., (1940, CA5 Ga) 111 F2d 400.

Work of emptying containers of dried fruit into hoppers of grading and processing machines at and in the packing plant of a terminal market is not agricultural labor. Miller v Burger (1947, CA9 Cal) 161 F2d 992.

Picking fruit off conveyor belt for sorting, packing fruit into forms known as bricks, and filling paper bags and boxes with dried fruit and grading same is not agricultural labor. Miller v Bettencourt (1947, CA9 Cal) 161 F2d 995.

Where commercial plant was the place where the farmer-producer of dried fruit parted with all of his economic interest therein, it being purchased outright for processing, packing, and distribution by packing plant, such packing plant was a terminal market. Miller v Burger (1947, CA9 Cal) 161 F2d 992; Miller v Bettencourt (1947, CA9 Cal) 161 F2d 995.

Where 40 per cent of potatoes stored in warehouse were graded in basement of farm home upon purchase from farmer and sold to local market, employee of warehouse was not a farm laborer, since warehouse was "terminal market" for farmer. Ewing v McLean (1951, CA9 Idaho) 189 F2d 887.

Breeding, raising and pelting of foxes is agricultural labor for purpose of determining exemptions, and livestock includes fur bearing animals raised for pelts in captivity. Fromm Bros., Inc. v United States (1940, DC Wis) 35 F Supp 145.

This section makes no distinction between cooperatives and corporations in defining its coverages, and a cooperative engaged in processing dried fruits and employing 1500 employees would not come under the exemption granted to farmers. Baiocchi v Ewing (1949, DC Cal) 87 F Supp 520.

Rules of administrative agencies concerning what industries are engaged in agricultural labor, within the purview of unemployment insurance acts, are not binding upon the courts. Park Floral Co. v Industrial Com. (1939) 104 Colo 350, 91 P2d 492; Oak Woods Cemetery Asso. v Murphy (1943) 383 Ill 301, 50 NE2d 582.

Annotations:

What constitutes "agricultural" or "farm" labor within Social Security or Unemployment Compensation Acts. 53 ALR2d 406.

7. —Charitable organizations

A corporation carrying on a state fair and exposition was exempt from unemployment compensation taxes, although it carried on amusement features as an incidental function to assist it in promoting and expanding its educational

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1. Oklahoma State Fair & Exposition v (1942, DC Okla) 44 F Supp 630.
 typist doing non-covered employment subsec. (a)(8)(B) of this section was not the equal protection of the law. Wiesz- Secretary of Health, Education and Wel- 1971, DC Conn) 335 F Supp 1146.

A nonprofit public cemetery company is not entitled to exemption for social security taxes as a charitable corporation. Lexington Cemetery Co., Inc. v Commonwealth ex rel. Unemploy- ment Compensation Com. (1944) 297 Ky 851, 181 SW2d 699.

Ja. [Transferred]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Aug. 29, 1935, c. 812, § 17 [15], 49 Stat. 974; June 24, 1937, c. 382, Part I, § 1, 50 Stat. 317) was transferred and appears as 42 USCS § 228q.

1. Self-employment

the purposes of this title—

Net earnings from self-employment. The term "net earnings from self-employment" means the gross income, as computed under chapter 1 of the Internal Revenue Code [of 1939], derived by an individual from any trade or business carried on by such individual, less the deductions allowed under such chapter which are attributable to such trade or business, plus the distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 183 of such code [of 1939], in any trade or business carried on by a partnership of which he is a partner; except that in computing such gross income and deductions and the distributive share of partnership ordinary net income or loss—

(1) There shall be excluded rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares), together with the deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer; except that the preceding provisions of this paragraph shall not apply to any income derived by the owner or tenant of land if (A) such income is derived under an arrangement, between the owner or tenant and another individual, which provides that such other individual shall produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and at there shall be material participation by the owner or tenant in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant with respect to any such agricultural or horticultural commodity;

(2) There shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest (other than interest